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13 UNITED STATES BANKRUPTCY COURT  
14 NORTHERN DISTRICT OF CALIFORNIA – SANTA ROSA DIVISION

15 In Re:  
16 **DEAN GREGORY ASIMOS,**  
17 Debtor.

18 Case No.: 11-13214-AJ  
19 Chapter 13  
20 **MEMORANDUM OF POINTS AND  
21 AUTHORITIES IN SUPPORT OF  
22 DEBTOR'S MOTION TO VALUE  
23 COLLATERAL AND AVOID JUNIOR  
24 LIEN**  
25 **NO HEARING REQUESTED**  
26 Judge: Hon. Judge Jaroslovsky

27 In this matter, Dean Gregory Asimos (hereinafter "Debtor") filed for  
28 bankruptcy protection under Chapter 13. The voluntary petition was filed on August  
29, 2011.

30 11 U.S.C. §1322(b)(2) allows a debtor's plan to modify the rights of holders of  
31 secured claims, other than a claim secured only by a security interest in real property  
32 that is the debtor's principal residence. Case law has provided an exception to this  
33 anti-modification clause for the status of junior liens. Section 1322 focuses on the  
34 modification of the rights of lien holders, not the status of claims. In re Nobelman, the  
35 Court found that it was proper to look to 11 U.S.C. §506 for a judicial valuation of the

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1 collateral to determine the status of the creditors claim. Nobelman v. American Sav.  
2 Bank, 508 U.S. 324 (U.S. 1993). In re Zimmer, the 9th Circuit Court of Appeals  
3 reversed and remanded the case, finding that the Bankruptcy Code's anti-  
4 modification protection of Section 1322, is only available to holders of secured claims.  
5 Zimmer v. PSB Lending Corp., 313 F.3d 1220 (9th Cir. Cal. 2002). Therefore, a wholly  
6 unsecured lien on real property may be avoided in a Chapter 13 proceeding.

7 Vincent P. O'Leary, an individual (hereinafter "Lender") holds a junior lien on  
8 Debtor's residence. Lender's lien is a second mortgage with a present principal  
9 balance of approximately \$125,000. Debtor's real property is located at 1040 East  
10 MacArthur Street, Sonoma, California 95476 (hereinafter "the Property"). It is  
11 encumbered with a first mortgage held by Ocwen Financial Corporation with an  
12 approximate present principal balance of \$764,782.80. The present value of the  
13 Property is approximately \$607,600. As such, Lender's lien is wholly unsecured. A  
14 proffered estimate of the Property's value is attached to the Declaration of Dean  
15 Gregory Asimos filed concurrently herewith.

16 For all of the reasons set forth above, Debtor respectfully requests that the  
17 Court avoid the Lender's lien, remove the lien from the collateral, and determine that  
18 the status of Lender's claim is unsecured.

19  
20 Respectfully submitted:  
21  
**SAGARIA LAW, P.C.**

22  
23 Dated: August 30, 2011

By: /s/ Elliot Gale, Esq.  
24 Elliot Gale, Esq.  
25 Attorney for Debtor  
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEBTOR'S MOTION TO VALUE  
COLLATERAL AND AVOID JUNIOR LIEN - 2